GUIDES FOR THE NEW HOUSING EXPORTER

NEGOTIATING WITH THE BUYER

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Guide to Icons

The Tips and Warning icons are intended to draw your attention to special information.

Tip

Warning

Additional Sources of Support

This guide is intended as an introduction to international licensing and franchising. It focuses on the major issues and does not go into details. For that, we have identified additional sources of information and support.

To help you find the source best suited to your immediate needs, each source has been coded to indicate what it does. Please note that some sources of support require that you be a subscriber, and others are available only to residents of that Province or Territory. If a source does more than one thing, it has been coded accordingly.

This source will provide you with *printed* or *verbal* information.

This source will help you *find*, *understand*, or take an *action*.

If you qualify, this source may provide you with *financial* assistance.

This source can provide you with training in the form of *seminars* or *courses*.

This icon indicates a source of support with special emphasis on the housing industry.

Please note: the sources of assistance included in this publication reflect the situation at the time it was written. Some sources may no longer be available, others may have changed the services they offer, many more may be available on the Internet.

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Introduction

This guide provides some practical approaches to international negotiation for the new housing exporter, particularly the housing product manufacturer preparing to negotiate a first sale abroad. In the process, the guide also provides assistance for more complex export negotiations, such as joint ventures or the export of services. New Canadian exporters, who may be excellent negotiators on their home turf, need assistance in dealing with what is different in export negotiation: a variety of business cultures and approaches to negotiation, bargaining in particular.

We surveyed successful housing exporters to find out how they negotiated their transactions. From their experiences, five case studies were selected to illustrate negotiation in the field. This has ensured that the focus would be on practical techniques actually useful in the field. All theoretical advice was filtered through the experience of industry negotiators.

This guide assumes that the exporter has completed the process of marketing, selected a target market (see the guide titled *Getting Ready to Export*), ensured proper financing (see the guide titled *Documenting Export Financing*), screened the buyer and market (see the guide titled *Screening the Buyer)* and is now ready to negotiate the first international sale.

The contract negotiation process should establish common ground between your interests and the interests of your buyer: at its most successful, it should create sufficient mutual trust and confidence not only to land the export housing contract, but also to establish a business relationship and so launch a successful long-term export venture.

Overview

Chapter 1 shows how to prepare for negotiation. Chapter 2 describes and illustrates practical negotiation. Chapter 3 offers a number of case studies from our survey of industry senior executives on their negotiation practices, while Chapter 4 provides an introduction to the negotiating styles of several foreign cultures. Chapter 5 presents an introduction to the main export contracts, an outline of the sequence from quotation to the completion of the contract, and important clauses to include in it; Chapter 6 describes the Incoterms. The Annotated Bibliography and Internet Sites complete the guide.

1. Preparing to Negotiate

This chapter begins with an introduction on negotiation as practised in Canada's housing industry; defines negotiation and describes the preparation phase of the negotiation process.

Housing Exporters as Negotiators: The Questionnaire

We began by asking a question: how are housing exporters doing as negotiators? To find the answer, we sent a questionnaire to a selection of senior executives of housing export companies across Canada and asked them to tell us about their negotions with their foreign buyers.

The question was a response to suggestions in the export community that Canadians need to improve as negotiators: specifically, that they need to be tougher. Comments like, "they get taken in," "they are too nice" or "naive," or "they won't haggle" kept coming up. How accurate are these comments? How well do we negotiate?

On the evidence, the Canadian housing exporter is negotiating very well. In particular, the Japanese consumer's love of Canadian housing has made Canada the world's largest supplier of prefab housing to Japan over the last two years – ahead of the United States, Finland and Sweden. More than 20 Canadian companies are active there. And the Japanese are said to be among the world's toughest negotiators.

There is, nevertheless, room to improve. It seems some were "too nice," at first. In carrying out the early contracts, one executive wrote, "quite often we found ourselves on the hook for materials and labour that we did not feel were in the original deal. This was costly in both time and money; we intend be more careful from hereon in." Another, whose firm has been exporting since 1994, wrote, "With my negotiating experience, I have become more confident in promoting my own ideas and remaining firm on pricing and specifications" (see Chapter 3).

What is Negotiation?

Negotiation is a tool the housing exporter can use to make a sale. Its paramount principle is: everything in the deal is negotiable. However, both you and your buyer must accept this axiom if you are to agree on the terms of the sale. There are two basic negotiation strategies: problem solving and bargaining. You need to master both. The one you choose will depend in large measure on your buyer's strategy.

Negotiation can be defined as a method to reach agreement between two parties disputing an issue. There must be 1) a conflict of interest, 2) some ambiguity about the right solution, and 3) some opportunity to compromise. These three preconditions are absolutely essential otherwise no negotiation is possible. Negotiation consists of a co-operative and a competitive element. The tension between these two elements is central to negotiation: both parties want to come to terms, but both want to have the best terms.

If you overemphasize co-operation in your negotiation, you can lose not only money, but the respect of your buyer and your long-term prospects. If you overemphasize competition, you can reach deadlock and again lose the sale. The task of the skilled international negotiator is to find the right balance between co-operation and competition. Unfortunately, there is no magic formula: every negotiation is different.

Bargaining is the competitive element in negotiation. To bargain means to compete verbally for advantage with your opponent in the negotiation of the issues by means of argument and presentation of alternatives favourable to your terms.

It also, usually, means some conflict and insistence on the necessity for your point of view. Sometimes bargaining or "haggling" – verbal contention over an issue, like price – can become quite heated (although this can be either real or affected). However, every exchange can be turned to your advantage if you stay calm. If you do not allow yourself to be drawn into real anger, you can use your opponent's loss of control to get real (sometimes shamefaced) concessions.

Culturally, Canadians are often ill-prepared for the give and take of bargaining, because we try to avoid conflict, and especially "petty" conflict over price. We are problem solvers, seekers of consensus. But if you want to export, you must learn to bargain effectively. Because a problem solver negotiating with a bargainer invariably loses.

Bargaining is – to paraphrase von Clausewitz – simply negotiation by other means. It is an art that you must learn as part of becoming a good negotiator. And with proper preparation, its give and take can become, if not a pleasure, at least part of the satisfaction of a job well done.

Organizing the Preparation Phase

Get the Information You Need

Successful negotiation requires information. Make sure you are fully informed about your buyer and the buyer's likely negotiating strategy. You should already be familiar with your buyer's country, the housing market there, and your client's position and market share (see the guide titled *Screening the Buyer*).

Prioritize the Issues – Set Your Objectives

Rank all the issues you are about to negotiate.

1) **Must Have**: What are the issues that are really important? According to the questionnaire responses, these include price, payment method and production time.

What is your minimum or maximum settlement point (MSP) for each issue? The MSP is not your goal: it is your rock-bottom line, the worst deal you can accept. If you cannot get that much, you will walk away from the table. The name of the export game is profitability. You must make the MSP or leave – unless you find out, during negotiations, that your MSP was wrong.

Price

Your export price should not be the same as your domestic price. Make sure you have a cushion to bargain with and to make the export transaction worthwhile.

Payment Method

How will your buyer pay you? Make sure you have payment security: depending on the circumstances, ask for a performance guarantee, a bank guarantee, or EDC insurance. Insist on payment by irrevocable letter of credit (L/C). For more on payment options, guarantees and export finance, see the guide titled *Documenting Export Financing*.

Production Time

Make sure you give yourself production enough time to meet all deadlines. Anticipate and avoid any performance penalties. Exporters warn that foreign buyers often expect additional work or services to be performed as part of the original price; negotiate the production schedule, as well as every service to be performed. Make sure you allow, and negotiate, sufficient time for production, transportation, and delivery.

2) **May Want**: What are the issues you want to include but are willing to compromise on? For example, you might offer a payment method of 30 percent deposit on signing, with the remainder payable by L/C, but settle for a deposit of only 25 percent, in exchange for "FOB your factory" (see Chapter 6 for definition and other Incoterms). Never give anything away: always get a concession, preferably worth more, in return.

3) **Don't Care**: What are the issues that make no difference to you, but may be very important to the buyer? Find out during the negotiation and use them as "bargaining chips." For example, an exporter of prefab housing to Japan was told the buyer did not want packages of product containing four, six or nine items, numbers considered

unlucky; he insisted on packages of one, three, five or eight items instead. The exporter agreed to repackage – for a significant premium.

Analyze the Deal from the Buyer's Point of View

1) **The Buyer's Objectives:** What are the issues that are important to the buyer? According to the questionnaire responses, the buyer's issues are price, delivery time and quality/uniqueness of product/package specs. What is the buyer's MSP? Estimate the buyer's MSP for each issue. As you negotiate, revise your estimates.

2) **Power Balance:** Who needs the deal more? Carefully and honestly examine both your alternatives and the buyer's. The more one side needs the deal, the weaker they are. During the negotiations, ask questions and assess the answers. (Your buyer is sure to try to keep any weakness a secret. Keep yours secret too.) What will your buyer lose if he does not buy from you? Analyze your own bargaining power: do not overestimate the competition, nor assume that the buyer wants to, or can, go to another supplier.

3) **Analyze the Negotiators and Their Probable Strategy:** Find out about the particular negotiators you will be meeting: their personality, their political situation, how they negotiate. Try to develop a "psychological profile" of their chief negotiator. What kind of people are they? Aggressive, reserved, gregarious, secretive, manipulative? Prepare by assigning roles and "playing through" the coming negotiations. Get ready for hard bargaining (see Chapter 4 and Chapter 8, especially Industry Canada's *Strategis* for information on the negotiation styles of specific cultures).

Plan Your Strategy – Bargaining or Problem Solving

As noted above, there are basically two diametrically opposed strategies in negotiation: 1) pure bargaining (win-lose) and 2) joint problem solving (win-win).

Pure bargaining is a way to cut up the pie: how much for me, how much for you? The more you get, the less there is for me. Joint problem-solving is a way to make the pie bigger so we both get more.

Western societies, as noted above, prefer the win-win approach, which includes the related values of relatively open communication and an emphasis on trust. Non-western societies emphasize bargaining. They want the largest piece of the pie, and so tend to be tenacious bargainers.

Problem-solving negotiation is the best approach, but it works only if both parties agree to use it. To repeat: If one side is bargaining while the other is problem solving, the problem solver usually loses.

Do not pretend there is no conflict during negotiations: there always is. But it is important not to react emotionally; answer the following three questions:

1) How much do our interests really conflict? The more they are in conflict, the more you need to bargain.

2) How important is the long-term relationship? The more important it is to both of you, the more you should, usually, emphasize problem solving.

3) What approach is the other party using? If the buyer is bargaining, you too have to bargain. Most buyers simply like to bargain for the best deal. And why not? It is a profitable approach. You do not have to be hostile; just tough.

Learn About the Buyer's Country and Culture

Do not get off on the wrong foot before you even begin negotiating; for example, for clients from cultures that are conservative and formal, avoid excess familiarity, dress conservatively in standard business attire, and do not call the client by his or her first name.

You have probably learned something about the buyer's culture already. Make sure you are informed by referring to sources like DFAIT's *Exporter's Guide* for the country, the CIA World Factbook entry or the United States Department of Commerce website entry for the country. Do some research – read books, magazines, even travel guides on the country, and avoid basic inadvertent mistakes of body language, signs or gestures that might be offensive to your foreign buyer (see Chapter 4).

Know the buyer's language or make sure you have your own translator; this is emphasized by almost every respondent in the questionnaire. English is spoken far and wide, but rarely well.

Certain legal and business concepts are ingrained in the English language, and are therefore poorly translated and not properly understood. They are literally foreign to some cultures. Take the idea of private property; in the West, this means private ownership of property; but in Russia, for example, the Soviet tradition was communal ownership, and that is still the prevailing attitude to property there.

Long-term Strategy: Build Trust

It is vitally important to think beyond the current sale. What are your long-term objectives? Are you planning on future sales with this foreign buyer? Then you should also be trying to build a long-term business relationship. Successful exporting is about building mutual trust.

In general, you will need to strengthen your bargaining skills; but at the same time, you should not lose sight of the long-term strategy of building durable trade relationships. So you must balance two seemingly opposed requirements:

- **Be tougher:** As noted above, you must be a tough bargainer to defend your interests in the export transaction. Our survey respondents all indicated that, with experience, that has taken (or is in the process of taking) place.

- **Understand and satisfy the customer:** Listen to, understand and satisfy the needs of your customer. That is what will create a durable export customer. This should be the long-term objective.

These two objectives are not incompatible; toughness does not mean hostility. We asked an experienced export negotiator about this: how do you handle the all-important first impression at a negotiating session? His answer: relax, try to find out about the other person by being open, and above all, listen:

"Negotiations usually begin with small talk. In addition to negotiating the sale, both of the you are trying to find out about each other. Both of you are asking yourselves, Do I want to do business with this person? Can we get along? Do we like to do similar things? Stressing common interests at this stage is important. It is no coincidence that Japanese business people, for example, are often said to negotiate on the golf course. Personal chemistry between the two parties is very important in establishing trust. Do you like each other? Do you want to meet again to do business? Is the feeling mutual, 50:50? Often liking each other, liking to visit each other's country, matters more than clauses in a contract."

The importance of personal relationships came up again and again in the responses to our questionnaire. For example, a British Columbia housing exporter told us that whenever Japanese negotiators come over, he takes care of their logistics: he finds them hotel rooms, hires a Japanese translator, takes them out for dinner. "Personal contact with the clients is extremely important. You have to establish a personal as well as a business relationship. To the Japanese, the two are linked together."

2. The Negotiation Process

The negotiation process can be broken down into four main phases: preparation, exploration, bargaining and closing. In Chapter 1, we discussed the all-important preparation phase. Here, we discuss the other three and focus on how to use your preparation effectively.

- **Exploration**: This first phase of face-to-face negotiation is when you create the right atmosphere for the whole negotiation; communicate your position; and learn the buyer's initial position. Listen and try to analyze the situation from your buyer's point of view.

- **Bargaining**: During this phase, both sides offer and discuss specific proposals. Opening statements often indicate an understanding of the other side's proposals, noting the elements that remain unacceptable. Succeeding proposals should always include an offer, usually with conditions or time limits. Keep reviewing your buyer's proposals: look for signals, both in substance and style, and respond to them. Ideally, as concessions are made and issues settled, the distance between you is reduced and final agreement comes ever closer.

- **Closing**: This is the most difficult phase. You have four tasks:
  - test the buyer's limits to learn how far he can be pushed
  - communicate finality: signal that you cannot be pushed too far
  - use the deadline pressure: make it work for you
  - let them save face: make them feel good about the deal and the way it was reached

Closing becomes possible when the tabled proposal meets the needs of both sides and the terms are agreed to.

The closing phase is also when arbitration and conciliation terms are set (see Chapter 5); in addition, provisions for various contingencies, performance bonds and penalty clauses may also be agreed upon. There is usually some ceremony to mark the agreement, often a signing ceremony, handshakes or bows, etc.

Negotiation: An Illustration

What follows is a description of a "typical" negotiation process. Of course, no negotiation is ever "typical": each one is as different as the two negotiators. With some buyers, it will be formal, as in Case Study 1; with others it will be less so. Usually, first or second sales negotiations will be face to face, while later ones, as trust and a trading relationship is

established, will simply consist of a quotation followed by successive faxes until agreement is reached, as in Case Study 2 (also see Chapter 5, The Sequence, p. 37).

Story Outline: Your company, ABC Thermal Windows Inc. of Vancouver, is negotiating the sale of 500 large triple-glazed picture windows incorporating a unique technology and design to a Japanese buyer, for a new subdivision of Canadian-style single detached homes in Kobe, Japan. There are just four negotiators: you and your assistant (who will also act as translator), and your opposite number, the Japanese manager and his assistant. Both of you are principals with final decision making power.

You are negotiating on May 15, at your plant in Vancouver; you have negotiated with the Japanese builder before, but not with this buyer, who is about your age and rank in his firm. You know that his builder wants the windows for a "Canadian look" subdivision, complete with cedar shakes and shingles, consisting of 500 luxury homes. The picture window size and quality has been specified by the buyer (one model called the "the Bonavista").

Negotiating the Price: To simplify this illustration, we will negotiate one issue: price, one of the most important issues to both buyer and exporter.

Let us proceed through the four phases of the negotiation process.

Preparation

Get the Information You Need

From your sources in Japan, your company has learned that the 500 homes in Kobe are 80 percent presold, that construction will start on May 20, and that the Japanese buyer's company needs all the windows on a "just-in-time" basis on July 15. You know two competitors were approached but could not fill the order by July 15. You also know your technology is the one they want – it has the best value, as well as cedar frames and other design features Japanese clients have found particularly attractive.

Prioritize the Issues – Set Your Objectives

Your price for the product in Canada is $1000 per unit; the buyer probably knows that. You have calculated your export price at $2,000 per unit. Your MSP: given the circumstances, $2,000/unit. You would be willing to go down five percent, if necessary. Other Issues: You need a minimum of five weeks for delivery, although you can perhaps make do with four.

Analyze the Deal from Buyer's Point of View

Their Objectives: Timely delivery (on July 15) at the lowest possible price. Buyer's MSP: $2,500 + per unit. Given the size of the project, the cost of housing in Japan and the builder's need for the timely delivery of this building supply, the cost of the windows is a very small part (less than one percent).

Power Balance: The buyer's company needs the Canadian windows on July 15: They are committed, and you know that: the power balance is strongly in your favour. Your buyer may not know that you have that information. He has a lot to lose if you do not agree to sell. Your company has the capacity to produce the 500-window shipment, but needs $200,000 up front to finance the extra production – terms agreed to by the Japanese buyer company in the past. They are a reputable firm and payment terms will not be a problem.

One factor may be that at $1m (100 m yen) this would be the largest purchase ever from this buyer, and he will try to drive down the price.

Analyze the Negotiators, Probable Strategy: You have dealt with this company before and you know they are tough bargainers. They will lowball to start and probably try to use the two competitors' bids to bring your price down. The new buyer may not know that you have learned that those suppliers turned down the deal. As well, the new buyer will probably try to impress you, as well as his bosses, with his tough bargaining. For your part, you have been unable to find out about the personalities of the two Japanese negotiators.

Plan Your Preliminary Strategy

You have made the first price offer of $2,000 per unit when you handed the visitors the preliminary pricing and specs sheet. You know your opponent is likely to be a tough bargainer: you know that bargaining tends to have the effect of reducing your price, so your strategy will be to state your price and defend it.

You decide to: 1) stand firm on $2000 per unit price (five percent drop maximum, late in negotiation, to help close, if necessary); and 2) demand eight weeks for delivery (your absolute minimum is four).

The Negotiation Agenda

- Welcome of guests and seating
- Introductions and exchange of business cards
- Formal welcome
- Presentation of negotiation agenda
- Profile of ABC Windows presented
- ABC Windows Plant tour
- Luncheon
- Review of product specifications
- Review of pricing structures and payment terms
- Questions and discussion
- Formal offer of a sale
- Close of negotiations

Exploration

Everything so far has gone well. The morning was taken up in the introduction, welcoming, seating, etc., ending with the factory tour and lunch. You have learned a bit about the new buyer: he is quiet, thoughtful, extremely well informed and knowledgeable about the product. Now, with the product specs over, the price negotiations begin.

Buyer: The buyer quietly states the opening offer. Your translator repeats in English: "that with such a large order, the buyer expects a very significant discount." His offer is **$800 per unit**.

Exporter: This is just about what you expected: a lowball offer. You launch, just as quietly, into a description of the high quality of this product: the product sheets are in front of you. The Bonvista is top-of-the-line, unique, triple-glazed, a high-quality product for a high-quality house. Your offer is **$2,000 per unit**.

Buyer: "In Canada the price is $1000 per unit. I am buying 500 units. Our company deserves an even bigger discount."

Exporter: You talk about quality, materials, uniqueness and durability of product, spread out the cost over time (windows will last for the lifetime of the house), etc. You stress the benefit to the builder of having the best product on the market in his homes. To prevent deadlock, you decide to go to another issue. Since there is no movement on price, for now, you suggest that you note each other's positions and move on to delivery time. **You offer eight weeks.**

Buyer: "Eight weeks is too long: we must have the products in four weeks."

Exporter: You respond that four weeks is not enough. But you signal willingness to compromise – "we might be able to work something out. If we push our suppliers and workers we might be able to shave off a week."

Bargaining

This third phase has to do with closing the gap. You want to create momentum toward closing. Both of you have to move toward a deal. Now you know each other's positions. The negotiation has been psychologically satisfying, because both of you have shown toughness. The atmosphere is also cordial.

The outline of a possible deal is beginning to emerge. You have stood firm with your price. The buyer has bluffed along with his $800 offer. It is obvious that faster delivery is important to him. You have signaled that you might move on delivery time.

If you are careful, you can get your $2000 price, conceding three weeks of delivery time that you don't mind giving anyway.

It is important to keep the real power you have to yourself, at this stage. Do not give away what you know – that your buyer, in effect, must deal with you. Do not humiliate him; you are also building a relationship.

Move slowly and deliberately during the bargaining phase. Convey a willingness to deal, but on the right terms. Say, "That is what we both want, isn't it?" You have achieved a great deal so far; the tone of the discussions has been tough but open and unstrained. There is a feeling that a deal is possible. The buyer tries another bluff:

Buyer: "I have an offer of $800 per unit on the table. I also have a letter from your competitors XYZ Windows quoting a price of $800 per unit for the same window. How can you justify more than double the price?"

Exporter: You talk about the superior quality of the Bonavista unit. You have a sample right in the negotiation room; you go up to it, you demonstrate, use a pointer, go into details. Again, you suggest movement on delivery time may be possible. You finish with, "as for XYZ windows, you do not want second-rate windows on first-rate homes."

Buyer: Requests a short break. Goes outside to make a telephone call to his superiors. Returns and offers to "split the difference" between the Canadian price and $2000; new offer – $1,500 per unit – "But delivery must be right away! Right away! Four weeks!"

Exporter: You welcome the price concession; you say it shows promise of resolution. You note how much closer to each other's position you are. You say that you both want to get this deal done right. Four weeks, of course, is impossible; but you offer delivery in seven weeks. The buyer counters with $1600 and six weeks; you come back with $1,975 and 45 days. The buyer eventually moves to $1700 and five weeks, you return with $1950 and six weeks.

Closing

The closing is a stressful time. The buyer is keenly aware that he has made a lot of concessions, and is reluctant to make any more. But both sides are beginning to see an agreement shaping up at $1900/unit with delivery in five weeks. This is a time to talk about the benefits of the deal for the buyer. There are many closing techniques. Payment terms are discussed and agreed to. The buyer stands up and formally declares that he will accept a price of $1,900 and a delivery time of five weeks. You both bow and shake hands.

The buyer confides he must go to negotiate other supplies the next day and congratulates you on your negotiation. He is pleased because he is $600 below his MSP of $2,500. You are pleased because you conceded only $100. But you could have pushed him harder in a free negotiation; if you had not been bound by the seller's price and spec sheets, you might have won an even higher price.

The contract is signed. That evening you take your buyers out for dinner, show them around Vancouver. You tell them that it is a good deal – good for them and good for ABC Windows. There will be other deals in the future, and they too will be good for both of you.

Not many negotiations move as quickly or smoothly for the exporter as the imagined one above. Nor is it often that you have inside information that will allow you to stonewall on price this way. Be prepared for hard bargaining on all issues. Your bargaining and negotiation skills will improve; as we noted in the introduction, the objective is to:

- be a tougher negotiator; and, at the same time
- understand and satisfy the customer.

Some Negotiating Tactics

This section is intended to touch briefly on a few of the many ploys and tactics that have been developed and used by negotiators since trade began. They are presented in no particular order, much the way they can come at you during a negotiation.

"What If" Questions: One of the most useful phrases in the negotiator's arsenal, "what if" questions can define the buyer's settlement range. In fact, asking questions by itself is an art that the negotiator should cultivate. In the ABC Windows negotiation above, you might have asked, "What if the window were smaller (therefore cheaper)? Would that be more acceptable?" "What if you chose another model?" "What if you chose double glazed or single panes?" What if you chose another material or another wood?" to find out the range of negotiable alternatives.

Haggling: If there is one negotiating skill that Canadian negotiators are said to fall short in, it is plain old-fashioned haggling. This is a simple process, with settlement usually about halfway between the first offers of each party ("splitting the difference"). Because of this, the party making the first offer is at a bit of a disadvantage, as the exporter in our illustration found: the buyer naturally attacks the price of the seller.

Haggling is as much a ritual as a tactic in many foreign cultures, most proverbially at the oriental marketplace. It will stand you in good stead in any negotiation.

We, of course, are familiar with haggling in Canada as well, at venus like garage sales, or with our families. For example: a 10 AM family breakfast scenario on a snowy Saturday morning in January might include the following negotiation:

"Dad, can I have $10?"
"No, but I'll give you $5 if you shovel the drive."
"I'll do it for $9."
"Here's $5 for the driveway and another dollar if you get me the paper."

"Give me $8 and it's a deal."
"How about this: here's $6 for the driveway and the paper, plus 50 cents if you take out the garbage. If you get all that done by eleven, I'll give you an extra dollar. Deal?"
"Done."

Good Faith, Bad Faith Bargaining: Negotiators sometimes do not bargain in good faith. With your own buyer, you should assume good faith unless there are extra-commercial considerations at play, like a political ideology or some other agenda.

Bargaining in bad faith is against the law in Canada, the United States and the developed world. Bad faith tactics include assigning negotiators with no authority, reneging on concessions, surface negotiating (without intending to settle), etc. If these are being used against you and you fail to object, you risk appearing weak. Hardball negotiators will sometimes accuse you of bad faith negotiating to "soften you up."

Anger: Anger during negotiations may be real or affected. Your buyer may demonstrate anger by screaming or banging things. Opponents who really get angry make errors: use them to win concessions. You, however, must never lose control if you are really angry - your judgement suffers, you may concede too much, etc. Ask for a short recess, if necessary, to compose yourself. Use fake anger to show opponents you have been pushed as far as possible (true or not), that an issue is important, etc. Be aware, though, that many conservative cultures (especially Asian ones) never show anger and pride themselves on self-control. You win no points faking anger with them.

Bad Cop/Good Cop: The buyer tells you, confidentially: "I don't mind paying you what you want. In fact, I'd love to, if I could. But my boss will fire me if I pay you a cent over $1600 per unit." The right answer? "So let me talk to your boss. I have already conceded too much. The price is $1950 per unit, period."

Closing Tactics: The art of closing has to do with satisfying the need of both parties to feel they have completed a "good negotiation" – as well as a knowledge of how to handle opponents' tactics. Here are a few ways to close a negotiation:

- **Ask questions:** "Is there anything we haven't settled? Well, then we are agreed, right? or, "What objections do you have to my offer?" Dispose of them one by one, then, close with, "If there are no more objections, I assume we have agreement."

- **Summarize**: Go over everything agreed on, emphasize your concessions but not theirs, then give all the reasons for agreeing to the current offer. Or, you can list all the reasons to agree, all the reasons to disagree, and point out that the former outweigh the latter (also known as the Ben Franklin close).

- **Trivialize**: the remaining differences, then close.

- **Split the Difference**: Settle halfway between the current proposals. Or, you can suggest some other split favourable to you, like 60-40 or, claim you cannot afford the deal otherwise, 80-20!

- **Table**: Finally, table the remaining unresolved issues and try to induce them to close. This forces your opponents to look at the disagreements and decide they are not worth losing the deal over.

Salami Slicing (or Nibbling, Nickel-and-diming): This is asking for small concessions one after another. It is a way to make progress under conditions of low trust. Salami slicing becomes nibbling/nickel and diming when it includes a threat to pull out of the deal unless these small concessions are granted. Publishing your prices is one way to fight this tactic, as is treating it as a joke, ignoring it or taking back a concession of your own in return.

For more negotiating tactics, see Churchman in the Chapter 7.

Some Rules for Negotiators

- **Never accept the first offer**: No matter how good it appears. The seemingly high price offered, in Canadian terms, can in fact be sheer robbery in the buyer's market. Set your price high enough to make the export venture worthwhile. Be informed about the buyer's home market: know what comparable housing products cost there, and the rate of exchange.

- **Really listen to what your opponents are saying**: This is very important: a corollary is, talk no more than necessary. Listen to understand what your opponents' underlying position is and why. Listen for the information, the implications, the tone of the voice. This does not mean being sympathetic to their position: they are trying to get the best possible deal for their side, as are you. Negotiators are opponents by definition.

- **Be a tough negotiator**: Open with a very high demand, stick to it and make few, small (but no large) concessions. Concede less as negotiations continue and do not be disturbed by threats of deadlock. Soft negotiators, by way of contrast, open with a modest demand, reduce their opening position and make generous concessions. They are terrified at the possibility of deadlock and always lose.

- **Never concede for nothing – demand a (larger) concession in return:** This is true, by the way, even if the other side is being generous. (The technical term is "making unilateral concessions.") Unilateral concedes are rare, and may have other agendas.

- **Make sure you have the power:** Power is a matter of perception. Every negotiation has a power balance, and you should do everything you can to tip it in your direction. You have the goods the buyers want. That is why they are negotiating with you! Unfortunately, almost all exporters – not just Canadians – worry about the power of the buyer and the extent of the competition. This worry shifts the power balance toward your opponent for no good reason. Do not take your buyer's strengths for granted. Try to find out what they are beforehand and use the information to your advantage.

- **Never reduce your price – change the package:** See Case Studies 1 and 2. Once a price challenge is dealt with in this way, you can put together some custom-made deals that are good for you – and good for your buyer. Tailoring the package to his specifications can result in truly "win-win" deals and is an excellent method to resolve deadlock in price negotiations.

- **Resist threats:** The threat is usually, "Accept my deal or I will go to someone else." Ask "Why?" and listen. Or calmly suggest the threat will not have any effect on your position. The trouble with threats is that you might be tempted to counter-threaten; this can quickly escalate beyond what is acceptable to either side. Never threaten unless your threat is credible, and you have weighed all possible outcomes, including collapse of negotiations.

- **Resist intimidation:** Intimidation comes in many forms. Your opponent's company may appear to be larger and wealthier; they may sport expensive clothes and gadgets; flash cash or credit cards; have lists of international offices on their letterhead; give the appearance of being completely unrushed and unworried. Recognize these calculated intimidation gambits and ignore them. Otherwise you have allowed the power to shift toward your opponents.

- **Control your emotions:** Real anger or fear cloud your judgement and work to your opponent's advantage. Never gloat if you win; crowing will hurt you the next time. At the next contract negotiation, simply offer the current contract as a precedent and model.

- **Study Japanese negotiation methods:** Julian Gresser, an expert on Japanese management, believes that the Japanese may be the world's most sophisticated negotiators. Given that Canadian housing firms are doing a huge business with Japan, studying their negotiation methods, which Gresser calls "the Japanese code" is useful (see Chapter 4).

3. Case Studies

What really happens "in the trenches"? In this chapter, we provide five detailed responses to our questionnaire from senior executives of exporting firms in the housing industry.

Case Study 1

Prefab Housing Component Exporter Negotiating with Agents

Company and Product: This firm manufactures prefabricated wood building components for residential and light commercial construction. It operates two wood component manufacturing plants and a window and door plant. In addition, it runs three retail outlets, and so can offer a complete construction package including all exterior/interior finish and accessories, as well as wallpaper, carpets, draperies and even furniture to foreign customers who want the complete "Canadian look."

Export Market:

Japan (since 1994).

Negotiation Process:

The company first exhibited their product at the Tokyo Home Show in 1994, with the assistance of the Japan External Trade Organization (JETRO), where they met a management consultant (agent) representing more than 140 Japanese construction companies. Their subsequent dealings with Japan have been through agents in Canada acting on behalf of the buying companies. This is how the president of the company described the sales negotiation process.

Size of teams: Exporter: two, plus an interpreter; Japanese agent: two.

Location: Canada or Japan.

Major issues:

Canadian exporter

- Price
- Method of payment
- Product specification
- Delivery requirements (can we meet the buyer's schedule?)
- Size of order (is its volume large enough to realize cost advantages in our purchasing and production?)

Japanese buyer

- Price
- Production capacity (i.e., timely delivery)
- Product quality
- Product uniqueness (They want a product that sets them apart from their competition in their marketplace.)

Negotiation 1: Presentation of the Product and Pricing

Preparation: When the first meeting has been arranged, we prepare a preliminary pricing schedule and make copies for everyone attending the negotiations. A clear and unambiguous set of specifications is included to avoid any confusion over what the price represents.

Meeting format: This will vary, depending on where it is held and who is the host. When we host Japanese delegations, negotiations have often required more than one day, especially if simultaneous interpretation is needed. Meetings are formal.

In the evening, we take our Japanese clients out for entertainment. There is little or no business discussion. They also like to go out to some tourist spots, and do some gift shopping for people back home.

Negotiation 2: Plans for Specific Projects and Quotations

The next negotiation will probably take place through the agent (if translation is required), almost certainly by fax and by phone. Plans of specific projects are forwarded, and full price quotations, including all shipping and other export costs, are prepared and sent to the customer. An effective tool to deal with customer price objections has been to suggest alterations to the specifications or size of the project to reduce the overall package price. This may help the buyers meet the requirements of their market, and they will be grateful.

When a quotation is accepted, a Pro-Forma Invoice (or Sales Contract) is prepared and an irrevocable Letter of Credit is requested (see Chapter 4 for post-negotiation sequence).

Concluding Comments

We have had some misunderstandings because of the language barrier, but nothing very significant. To prevent this we always have our interpreter at the negotiation sessions.

My negotiation technique has improved with practice. The more negotiations I have been involved in, the more confident I have become in promoting my own ideas and remaining firm in my pricing and specifications.

Case Study 2

Prefab Home Exporter Negotiating with Foreign Builders

Company and Product: This firm exports complete prepackaged homes made up of, depending on the clients' choices, components such as: prefab roof trusses and insulated wall panels; dimensional lumber and various plywoods; kitchen and vanity cabinets, flooring, doors and windows; hardware and fasteners; tools; roof shingles; insulation and vapour barrier materials; etc.

Export Market:

Japan and Russia. The company deals with builders directly, avoiding agents, because, in the words of their vice president, "we need to deal with people who speak the language of construction." His account continues below.

Negotiation Process:

Location: We negotiate wherever we need to – there is no formula or ideal location.

Style: Most often, our negotiations are done by means of successive faxes, back and forth until we agree.

Only once did we have a team at a negotiating table: we had a team of three: our president, vice president and Japanese sales manager; the buyer had two: a general manager and a top staff member. Negotiations were lengthy, ending with eventual agreement after concessions from both sides.

Major issues:

Canadian exporter

- Price.
- Method of payment – standard: a certain percentage downpayment, remainder by L/C, which most clients accept.
- Delivery expectations of our Japanese clients, who have been known to order at the last minute and want everything RIGHT NOW! We negotiate as much lead time as possible, as our suppliers need four to five weeks to prepare our ordered material.
- Our contractual obligations, as understood by our Japanese clients, often meant we were "on the hook" for materials or labour that we did not feel were in the original deal. This has cost us greatly in both time and money, and we intend to be very careful in future [negotiations].

Japanese buyers

- Delivery time, delivery time, delivery time
- Price
- Quality of products: they keep insisting, unreasonably, on "high quality – low cost"

On Japanese Negotiators: The Japanese approach is subtle but firm. If the negotiator feels he must force a concession from you, even a very small one (allowing him to "save face"), you must be sensitive to his need and find some way to give it to him.

As project leads to project with the same client, trust between us has grown. Sales now are a relaxed affair: they are ongoing, or based on a handshake and a faxed Order Confirmation sheet. In fact, we now accept our Japanese clients' verbal orders, and begin work without even waiting for the return Order Confirmation or even the down payment. It would be so unlike the Japanese to renege on a verbal agreement. We trust them personally to "do the right thing" and we have been lucky so far.

On Russian Negotiators: Our Russian partners negotiate more formally, and demand a more rigorous approach to business, with Company stamps on all contracts, Terms and Conditions fully spelled out in the contract, etc. On the basis of our experience, we require full payment up front before we assign labour or materials to begin the work.

Concluding Comments

Language and background knowledge of the client's business culture are critical to a successful export relationship. Either have someone on staff who knows the language well, or hire a very good interpreter.

Client expectations for price and delivery are almost always impossible to meet. Insist on realistic costs and delivery times. Clients then usually request changes to the specifications to reduce costs.

The language of construction and architecture is understood by builders everywhere (i.e., load transfer, slope, light, form, weather factors, human scale, etc.), so there is a common ground on which to begin negotiations.

Canadian wood-frame housing is reaching a wider, more demanding international consumer as foreign builders come to Canada to import Canadian-style housing. We find we are actually introducing builders to 2x4 construction, helping them develop their architectural plans and choose complementary materials, and even providing training in the techniques of 2x4 construction.

Case Study 3

Manufacturer of Sealant System Negotiating with Distributors

Company and Product: This exporter manufactures a roofing and concrete waterproofing system, hot liquid applied. It exports fully 65 percent of its production.

Export Markets:

United States (through its American subsidiary, to meet the "Buy American" requirement; also through manufacturers' agents); United Kingdom (through a joint venture); and exclusive distributors in Turkey, Saudi Arabia, United Arab Emirates, Hong Kong (which also sells their product in China), South Korea, Taiwan, Singapore, Indonesia, the Philippines, Panama, Ecuador, Trinidad and the Dominican Republic.

Marketing and Negotiation Process

- Exhibit at construction trade shows in the country
- Negotiate with various potential distributors
- Appoint a distributor
- Sign a contract after one year of selling

Size of teams and location: Exporter: one plus interpreter; buyer: two. In Asia teams can be as large as four or five. In buyer's country.

Major issues:

Canadian exporter

- Method of payment – most important – first order, buyer must raise an L/C
- Makeup of the buyer's company (Does it have the contacts and the resources to promote our product?)
- Price – least important

Foreign buyer

- Meeting local standards – passing quality assurance testing
- Technical help and training in use of product
- Price – very important only in United States and Europe

Concluding Comments

We have a competitive product that we market with a Swiss partner company. The most important marketing/negotiation problems we have overcome are: **United States** – the "Buy America" program (solution: established an American subsidiary), and price; **Europe** – meeting local standards, and price; **South America** – the need for Spanish-speaking sales staff; **Hong Kong and the Asian tigers** – the need to build personal relationships, respond quickly to faxes and pass the standards approval process.

Case Study 4

Building Technology Firm Negotiating to Establish Joint Ventures

Company and Product: This exporter is in the business of transferring technologies and know-how for the manufacture of roll-forming equipment and automatic jig tables for the production of galvanized light steel building panels, both load-bearing and non.

It has succeeded in the difficult area of Central and Eastern Europe (CEE) by negotiating a number of joint ventures (JVs) with local partners, and strategic alliances with builders, developers and mortgage companies. The firm also helps negotiate entry for Canadian construction companies into CEE, and is establishing a building supplies consortium in Toronto for export to Europe.

Export Markets:

CEE, mainly the Czech Republic (through JV partnerships); Malaysia, through a subsidiary company.

How Do You Approach JV Negotiations?

For this company, negotiation is an integral part of the long-term JV establishment process which includes technology transfer, training of domestic staff and generating market acceptance for the product. The company's president offers the following advice on negotiating to set up JVs in CEE:

- have deep pockets;
- on the local JV partner: look for an entrepreneur whose business is about the same size as yours, who has already done a JV, and who is willing to be paid only on successful completion of the JV;
- have the local partner's financials North Americanized and then valued on cash flow versus assets;
- form the JV, then work together to establish the financial requirements to purchase Canadian technologies or products; and
- always follow up, always keep notes.

Whatever the service, good or technology the joint venture in CEE is set up to produce, it must have export potential to a Western market.

Major issues:

Canadian exporter

- Red tape, both in Canada and abroad
- Lack of financial assistance for small to medium-sized businesses (Ontario)
- Measurement: all steel products are measured by weight, not by length or coverage

- People trained under the old regimes in CEE will not change and are offended by new ideas or western business philosophy
- A belief in the CEE that the Canadian partner should bring all the money, technology and know-how, while the CEE side provides the plant and the manpower to create the joint venture. This assignment of responsibilities and share of ownership never works: the Canadian always loses control, and then his money.

JV partner

- East European: Awareness of lack of western business experience, for example, sales, marketing, general accounting, forecasting and costing
- Western business person: lack of knowledge about Eastern European opportunities; concern about security, lack of services, lack of business culture and support.

Process of Establishing a Housing Product JV in CEE

Transfer the technology and know-how, enabling the local market to drive the business. The product must have export potential for a Western market. The sequence is: negotiating the formation of the JV; prototyping; securing the finances collectively (not from the Canadian side only); training; and finally, delivering the product to market.

Establish a relationship with local banks. Consumers are held back by slow mortgage approvals, while the banks cannot afford to bridge-finance construction for periods of one year or more (the average time to erect a traditional house in CEE).

Create alliances with local housing developers, erect a Canadian-style "Model Home/Sales Office," and hire local sales staff. They can best overcome the local consumer's resistance to Canadian-style housing design through a combination of "show and tell" and economics: initial and long-term savings, speed of erection, comfort, increased living space.

Concluding Comments

East Europeans are canny negotiators who will always first suggest: "You bring the money and the technology, we'll provide the location and the manpower." As noted above, this never works. But they appreciate an honest long-term commitment to the market – it takes seven years, from my experience.

Case Study 5

Architect Negotiating to Export Services

Company and Product: This exporter is an architect specializing in residential design. Exporting services is different from selling a product; there are enough unique aspects to this case that we will simply let the exporter recount the deal as it took place. The key to export success here was the establishment of personal contacts and mutual trust.

Export Market:

Russia.

First Contacts

An invitation to supply architectural services to a foreign company, or individual, usually is the result of direct personal contact between the parties, or through an intermediary, such as a government agency or trade company already in the foreign country. In my case, I was introduced to my prospective client, a Russian builder from Moscow, by being involved in a management training exchange program sponsored by the Russian and Canadian governments.

The Russian builder wanted to know more about the Canadian home-building industry, and specifically came to Canada to see our world-famous wood frame technology. I specialize in residential design and through my industry contacts was able to introduce him to leaders in their respective fields of housing. Over the course of eight weeks, the builder met with architects, builders, a lawyer, a real estate agent, developers, manufacturers, educators and government officials. During this time I introduced my client to a small local builder who later formed a company with the Russian, to export Canadian goods and provide training to Russian tradesmen.

The Russian builder and I maintained telephone contact for a number of months, which led to an invitation to travel to Moscow to train senior members of the Russian builder's company in the fundamentals of wood frame technology. I was now an exporter of technology and a teacher.

Negotiating Contracts

Further discussions after the first trip led to another visit, this time to meet prospective house customers. A highlight of the visit was a five-day trip to a nearby Republic to meet senior government officials involved in planning and architecture. Back in Moscow, my Canadian associates were quickly establishing a wood-cutting sawmill and a window-door-making plant. My role kept changing, answering the need at any given moment, from teacher, to planner, architect, technologist, and project manager.

I left Moscow with two commissions and many more prospects. We exchanged drafts of contracts and negotiated terms of agreements, eventually developing a design-build contract that my client would offer to Russian customers. With this form of agreement I was not required to set up a practice in Russia. All legal and contractual issues were handled by my client.

Communications problems plagued us from the very beginning. We quickly discovered that commercial couriers, Russian postal services and e-mail were inconsistent, expensive and not dependable. We settled on telephone and fax communications. Important documents were often couriered by people travelling between the two countries.

To extract essential information from my client's customers, I developed a questionnaire, translated into Russian, which clients completed in an interview with my client's staff – after they had paid a retainer for my services. It consisted of six pages of detailed questions on all aspects of the home design, including personal desires and emotional issues. Design work was reproduced on computer and faxed to my client, who would meet with the customers to discuss their responses. The process was repeated a number of times to reach an approval.

On my third trip, I met with my client's customers to add a personal touch to our relationship and complete design discussions. My Canadian associates were brought to Russia to train Russian workers to become new framers and tradesmen. We used the first of our homes as a training project. Tools and some building materials were shipped from Canada to the site of the Canadian company.

All legal and approval matters were handled by my client, who was in a much better position than I to deal with the authorities. Legislation and regulations governing economic activities in Russia are unstable and in constant flux; currently, they are removing and dismantling the old administrative structures, but are not replacing them with effective alternatives. It is advisable to get legal and accounting advice before entering into contracts with Russians.

My contracts were conventional, by Canadian standards, based on hourly rates plus expenses. A retainer before starting work to cover immediate travel expenses and the contingency that the client fails to make a timely payment may be possible. Payment was difficult: money was wired from a bank in Moscow – one of the few that dealt with Canadian banks – after which the money passed through Estonia, London, New York to Toronto! There are copyright protection laws in Russia, but enforcement by legal recourse is difficult, expensive and time-consuming. An international arbitration clause (UN rules) is advisable.

Concluding Comments

Patience and flexibility are essential character traits in working abroad; cultural differences and language problems are bound to surface, requiring your best diplomatic skills.

4. How Buyers from Various Cultures Negotiate

This chapter provides only a brief introduction to the negotiation approaches of a few regions and countries. For more information, see the Exporter's Guide for the country from the Department of Foreign Affairs and International Trade (DFAIT), the CIA Handbook entry for the country on-line, the US Department of Commerce entry on the country on-line, and other on-line and library resources and periodicals listed in the CMHC guide entitled *Screening the Buyer* as well as the Annotated Internet Sites in this guide. On the basis of what you find, you should go on to do your own in-depth research on specific topics or market segments at specialized libraries and websites.

Use Canada's Multicultural Connections

Important but seldom-used resources are the Canadian trade associations founded by Canadian businesspeople to foster trade with many countries and regions of the world. Canada is a multicultural country, with many businesspeople who would be glad to answer your questions on the culture and business customs of their country (see Chapter 7 for Heritage Canada's Directory, *Multiculturalism Means Business*).

Negotiating from a Hotel Room

Negotiating in the foreign buyer's country can put Canadian exporters at a real disadvantage; but they can overcome this if they prepare. Two factors are paramount: the physical fact of the travel, food and accommodation; and what one expert has called "business culture shock."

"It occurs when the Canadian businessperson arrives at a hotel in a foreign city, and finds the telephone does not work; the streets are dirty, the cities full of crumbling buildings and beggars. After weeks of negotiating, feeling lonely and frustrated, the business person wonders whether that "yes" from the foreign buyer really meant "maybe" or whether the signing of the contract marks the end or beginning of the "real" negotiations. Another anxious question arises when he tosses and turns at night asking: When does a gift become a bribe?" (Navin Parekh, quoted in the Ottawa Citizen, 10 March 1997, pp. C1-2, "Corporate Culture Shock" by Juliet O'Neill.)

These problems are very real. To overcome what Gavin Kennedy calls "the loneliness of the long-distance negotiator" (see Chapter 7), you should book a room in the best hotel, get plenty of sleep, avoid strange foods, and do not drink excessively, if at all, when socializing with your opposite number, as you will often have to do. As for culture shock, you simply have to accept local people the way they are – "accept the differences, adjust your attitudes and get on with the business at hand." (see N. Parekh above)

When you are visiting, you must keep in mind that you are a foreigner to them; you have the strange habits and outlook; you are the unknown factor in their midst; and you are the odd one out. However part of the decision in becoming an exporter has to do with coming up against new experiences, meeting new people and overcoming new challenges.

Negotiating Approaches for Selected Geographic Regions

United States

The American buyer regards you not as a foreign exporter, but a domestic housing supplier. This is the most important factor in export negotiations with buyers in the United States, our largest export market.

American buyers want competitive price, superior quality and on-time delivery. They are used to rapid, efficient service, are very demanding, usually buy FOB USA, and so expect you to pay for all transportation and insurance costs, customs and import taxes, as applicable.

All these things are negotiable; the key point to remember here is that Americans love the art of the deal, and so enter into bargaining with relish. However, they lack the patience of some other trading cultures, so that if you develop a patient negotiating approach, you can bargain with them and win. Make sure you establish the power balance in your favour. Americans are famous for "bulldozing" negotiating tactics.

Remember, however, that the basic negotiating tradition on this continent is the "win-win" type, so that issues will tend to be settled on a "problem-solving" basis.

Europe

When approaching the European market, you must respect the individual national characteristics of each country. For example, negotiating in France will be different from negotiating with highly organized Germany; the Italian negotiator will expect a more personal approach, while United Kingdom buyers may be used to North American business practices. Europeans are also part of the "problem-solving" negotiating culture, so most issues can be solved that way. However, they can be formidable negotiators, and they fight hard and long for low prices. Many of these countries are major producers and exporters of housing technology themselves; so to get your price, your product must not only be competitive, but of very high quality.

Japan

To succeed in Japan, you must offer a superior housing product, and distribute it in the traditional way, through Japanese trading houses. As we have seen in Case Study 1, these agents will even invite you, and pay your expenses, to exhibit in the major trade fairs in Japan.

Of course, as noted in the same case study, the product must offer a unique technology, and be adapted to the particular needs of the Japanese housing consumer.

The Japanese are tough negotiators. They are not of the "problem-solving" tradition: they bargain long and tenaciously. One writer has described their style as a "code." He has studied it and offers a description and some lessons for negotiators.

The Japanese "Code"

The Japanese negotiation system is said by Julian Gresser to be an unwritten "code" of between 50 and 100 negotiation moves organized into a coherent system. According to Gresser, a lawyer and expert on Japanese management, it probably makes the Japanese the world's most sophisticated negotiators. Moreover, according to Gresser, this same negotiating approach is used by many other countries, including China, Korea, and all of southeast Asia, as well as Russia, the former Soviet Union and the countries of Central and Eastern Europe (see his article at the Industry Canada Strategis website, "What You Can Learn from Japanese Negotiation," Annotated Internet Sites).

Here are some negotiating principles based on the "code":

- **Play the game from the very start:** Negotiating starts with the first dinner with your opponent to discuss a possible deal. This constant focus on business is an emotional challenge for Canadians used to separating their "work" from "real life." Under the Japanese code, this is an artificial separation: nothing is more "real" than the deal. You must focus on it totally if you are to overcome your opponent.

- **Understand the "need" principle:** "Need" means basic need: air, water, food and sleep. Completing the export sale may be desirable, it may make you wealthier, but you will not die without it. This principle is the same as the Western one: be ready to walk away from the table, if necessary. The Japanese system has a series of techniques to create the illusion you desperately need the deal. If you fall for them, begin feeling anxious about them, you begin losing your focus and will ultimately lose the negotiations.

- **Watch your money:** Track precisely how much time, money and other resources you spend on the negotiation process. The Japanese system specializes in creating delays and negotiation blockages to waste your time and money in an effort to make you dispirited and make concessions you would otherwise not agree to.

- **Only deal with the decision makers:** Insist on this, or you will spend time with those who have no authority to make the deal.

- **Eliminate assumptions and expectations:** Do not assume that when the agreement is signed, "that's it." A signed agreement does not mean what it means in the West. Do not trust your opponent until you have fulfilled the customer's needs.

- **Create and train a negotiating team to shield you:** It should protect your resources – time, energy, creativity – and focus on meeting the needs of the other side.

- **Do not be discouraged by a no:** A Japanese no is not a final no. Learn from your mistakes and you will turn the no into a yes.

- **Let the other side discover what you want:** North Americans think negotiation is about telling; but the art of negotiation is about allowing the benefits of your side to emerge.

South Korea

Industry Canada's Strategis website offers the DFAIT *Exporter's Guide to South Korea* on-line. In an extensive section entitled "Negotiating with Koreans," it notes that Koreans can be ruthless and skilled negotiators, who bargain hard even with long-established suppliers. They have to feel they have "won" price negotiations. It is absolutely useless to tell them that you cannot go lower without "fatally eroding your profit margins," because it is standard practice in Korea that initial contracts are done at a loss to get a market foothold.

They may negotiate even after contract signing. Negotiations are not over until the cheques are signed. There are always tough, intense negotiations over price, and the best approach is to price your product high enough to allow you some room to offer apparent concessions without eroding profitability.

China

The Strategis website provides a great deal of information on negotiating with Chinese buyers. They, too, are very tough negotiators with a "code" similar to the Japanese one. Canadian exporters report that Chinese negotiators:

- take a long time to reach agreement;
- constantly back down from earlier decisions;
- conceal their problems, like lack of foreign currencies, until late in the negotiations; and
- negotiators lack decision making power.

For their part, Chinese negotiators report that Canadian companies:

- are rarely well prepared to deal in China;
- do not understand that the benefits to the Chinese must be obvious;
- are weak at building a long-term relationship and trust; and
- are poorly organized and often compete among themselves.

Arab Countries

In Arab countries, negotiations are often combined with social activities. There is often a formal negotiation process, but the real negotiation, and often the actual closing, takes place during leisure activities. The social process is as important as the negotiation process.

Another aspect of Arab negotiation has to do with the importance of personal relationships. Unless you develop a friendship with the the buyer, you will have difficulties in doing business in an Arab culture. Personality, family and background are of paramount importance: for example, negotiating with the son of an important businessman in an Arab country may be more worthwhile than negotiating with his general manager: the son is family.

In negotiations, they like longer, less formal sessions; they are given to expressing philosophical statements. Listen attentively to these: they are as important to them as the economic and technical issues of the project.

India

There is a huge "cultural information gap" in Canada about India, which is another place where relationships and family are very important. A tight negotiating schedule can be ruined by sickness in the family or a religious holiday. Time is not considered a commodity, as it is in the hurried West. Indian negotiators have a relaxed attitude to time that can frustrate Canadians. Take the time to build a relationship with your Indian counterpart, and the negotiations will take care of themselves.

5. Export Contracts

This chapter briefly discusses the legal documents drawn up by the Canadian exporter's lawyer and the foreign buyer after they have reached a negotiated export agreement. The legal document is, of course, the export sales contract, which governs the transactions described in Case Studies 1 and 2 in Chapter 3.

Case Study 3 is based on a different kind of sales contract – the exclusive distribution contract – for the rights of a foreign distributor to sell a Canadian exporter's product in his country.

Case Study 4 is about a more complex type of contract, which defines a long-term relationship between two companies – the Canadian exporter and the foreign buyer – which agree to set up a joint venture in the buyer's country and transfer housing expertise and technology from the Canadian exporter's firm to the new business entity for the purpose of manufacturing and marketing a product through the joint venture for their mutual benefit. Case Study 5 is about the contract negotiated by a Canadian architect providing services in Russia.

Both Case Studies 4 and 5 are important less for the legal agreements than for the personal trust established first, which then allows the writing and performance of the contract. Because of this, the legal documents will not be described here, although for Case Study 5 in particular, a good deal of legal background is provided in Chapter 3.

The Sales Contract

This is both the simplest and most important of all the contracts. Essentially, it is locally drawn up, and therefore subject to local law. In Canada it can be drawn up under either the code civil (Quebec) or common law traditions (English Canada), and is subject to both provincial and federal law, something that can be confusing to your buyer.

The sales contract is also governed by the United Nations Convention on the International Sale of Goods, in force since 1 January 1988, which, although not yet ratified by all nations, is recognized by many others, including the Canada, the United States, the western industrialized nations and China. Founded essentially on the principles of British common law, the Convention also incorporates elements of the American Uniform Commercial Code, the French code civil and other legal traditions.

Specifics of your contract will include the negotiation issues such as price, delivery schedule, specification of the precise package of housing goods, etc. Your lawyer will draw up the contract to reflect precisely the terms agreed upon between yourself and your buyer. Standard clauses and inclusions are included at the end of this chapter.

The Exclusive Distributorship

There are numerous ways to market housing products abroad. Each brings with it certain advantages and disadvantages. The correct choice usually involves the exporter's business objectives, financial means, and more often than not, commercial law in the target market.

For the exporter in Case Study 3, these include a joint venture in the United Kingdom, a wholly owned subsidiary, as well as manufacturer's agents in the United States (to meet the "Buy American" requirement), and thirteen exclusive distributorships in a diverse group of countries from Turkey and Saudi Arabia to South Korea, Taiwan and the Dominican Republic.

The exclusive distribution contract grants the distributor rights to sell the product throughout part or all of the area in question. The contract is granted after a one-year probationary period, during which the exporter merely sells product to the would-be exclusive distributor under a simple export contract. At the end of the year, he is granted the exclusive distributorship, which means essentially a monopoly on sales of that product in that country. The procedure developed by the exporter is simple:

- Exhibit at construction trade shows in the country
- Negotiate with various potential distributors
- Appoint a distributor
- Sign an exclusive distribution contract after one year of sales

Joint Venture, Architectural Services Contracts

The contracts for these more complex business relationships are discussed in the case studies themselves in Chapter 3.

Quick Contract Checklist

- Make sure you know how you are going to finance the export transaction.

- What is the effective date of the contract? If you have negotiated payment by irrevocable L/C, that's when the clock starts ticking (for more on financing and documentary credit operations, see the guide titled *Documenting Export Financing).*

- Know the implications of every clause you are agreeing to by signing. Always have your export lawyer review the sales contract before you sign.

The Sequence from Quotation to Performance of the Contract

Quotation

When you are satisfied with the buyer's response to the initial product, prepare a Quotation (Pro-Forma Invoice) based on the expression of interest. Attention to accuracy and detail is critical because the Quotation is the first part of the Contract. If the Quotation is accepted within the stipulated time limit without reservations, it becomes a Binding Contract. It is essential that the final Quotation be clear and unambiguous on all essential points. In addition, the Quotation must contain all necessary legal clauses for your protection. Your legal advisor can help you with these.

Quotation Checklist

- State your standard terms and conditions. Specify that the laws of Canada and your province apply.
- Use the metric system for all weights, measurements and specifications. Virtually the whole world, with the important exception of the United States, trades housing (construction) products under the SI (Système Internationale), or metric system.
- State what specifications and standards will be used in the transaction. Where applicable, specify that international standards are to be followed.
- Clearly define what the price means: EX WORKS, FOB factory, CIF, etc. Use the Incoterms (terms of trade) as defined in the International Chamber of Commerce (ICC) publication Incoterms 1990 (see Chapter 7; also Chapter 6).
- Clearly state the time limit of the Quotation. Depending on circumstances, it should not be much longer than a week.
- Specify your preferred method of payment: irrevocable letter of credit (L/C) confirmed by your bank, with sight draft (for more on L/Cs, see the guide titled *Documenting Export Financing*).
- Clearly state shipment is "FOB our factory" and subject to availability. Do not mention delivery dates – you have yet to negotiate with your buyer the question of ownership of the goods during shipment and who will be responsible for transport costs and safety of goods in passage. Note that this Incoterm is used differently in North America: FOB our factory (N. America) = Ex Works (rest of the world) (see Chapter 6).
- Write "E.O. & E." (Errors, Omissions & Exceptions – assumed corrected, included and noted) at the bottom of the Quotation.
- Clearly define packing and labelling specifications, including language requirements.

- Have your legal advisor draw up and include protection clauses in the Quotation: these will include clauses on applicable law in case of dispute (Canada and your province), location of arbitration court in case of dispute, etc.

- Send the Quotation by fax and by courier.

- Arrange interim financing, if necessary, through bank, Export Development Corporation, Business Development Bank, CCC, or other financial agency.

After Negotiation: Writing the Contract

Make sure the Contract corresponds in every detail to the accepted Quotation, including amount and kind of goods to be sold, with exact specifications, packing and labelling instructions, price and payment terms, all required documents including the Import Licence number (your buyer's country), Revenue Canada Customs and Excise Export Declaration B13, and the date goods are to be shipped. In addition,

- Keep the fax transmittal letter and the hard copy mailed letter.

- Cross-reference the Contract with the Quotation.

- Make shipping and transportation arrangements immediately (if this is your responsibility under the Contract).

- Open a file for each shipment. Contents include: all documents required prior to shipping, the Expression of Interest, the Prequalification Questionnaire, Quotation, Contract, and all subsequent and relevant correspondence.

- The file must also contain the export documents: the Bill of Lading (B/L), Insurance Certificate, Canadian Customs Declarations, Certificate of Origin, Consular Invoices (if required) and your Commercial Invoice(s).

Performance of Contract

- When you receive your signed and sealed Contract, request an initial deposit by wire transfer, if this is the agreed procedure. At the same time, your buyer will instruct his or her bank to open an irrevocable letter of credit (L/C) in your favour.

- Ensure price, quality, quantity, specifications of shipment. Also ensure packing and labelling meet language and other specifications in the Contract, and co-ordinate additional (if any, and if this is your contractual responsibility) packing and shipping with the freight forwarders.

- If terms are "FOB Our Factory," immediately send Bill of Lading, Packing List, Commercial Invoice, and other agreed upon documents to the bank for release of payment against L/C.

- Instruct your bank to issue a Sight Draft against your L/C as per terms of Contract. This ensures that the buyer pays the freight forwarder for stowing of goods in the event of shipping or docking problems causing shipping delays, or demurrage.

Legal Clauses You Must Include

Your lawyer will negotiate the inclusion of the following clauses, as well as others, depending on your particular circumstances, into your Export Sales Contract for your protection:

1) This Agreement shall be governed and interpreted in accordance with the laws of the Province of [as applicable] and of Canada.

2) In case of dispute, the parties irrevocably agree to submit the dispute to conciliation and arbitration by the arbitrators appointed in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce to the exclusion of a Court of Law, except to enforce the Arbitration Award. Said arbitration shall be conducted at the City of [here state: to be agreed beforehand]. Each of the parties agrees to respect a judicial acceptance of the award of the Arbitrators.

3) This Agreement between X in Canada and Y in [foreign country] creates an international agreement that subjects each of X and Y to the obligations of good faith, trust, and confidence which are essential to international dealings, in favour of the other.

This Agreement shall be subject to the United Nations Convention on the International Sale of Goods.

6. Incoterms

The INternational COmmercial terms are the negotiable conditions, that is, the rights and obligations of the seller (or exporter) and buyer (or importer), under which goods are delivered. They must always specify a port of shipment and a destination.

These terms were established by the International Chamber of Commerce (ICC), an international business organization established in Paris in 1910, with offices in 59 countries. Incoterms are intended to standardize the interpretation of major trade terms by buyers and sellers around the world. They are used in international contracts to eliminate conflicts of interpretation. Incoterms define the obligations of the Canadian exporter and those of his or her foreign buyer, represent real costs and liabilities, and therefore should be fully understood and included in the bargaining process. Incoterms are accepted by all the world's major financial institutions. They are an integral part of any international sales contract, which should mention the ICC authority explicitly: Incoterms 1990 (ICC Pub. No. 460) and Guide to Incoterms 1990 (ICC Pub. No. 461).

Incoterms are divided into four categories:

C-terms, under which the exporter must contract for carriage, but without assuming the risk of loss or damage to the goods, or any additional costs due to events after shipment and dispatch;

D-terms, under which the exporter must bear all costs and risks required to transfer the goods to the buyer's country;

E-terms, under which the exporter makes the goods available to the buyer at the exporter's premises; and

F-terms, under which the exporter must deliver the goods to a carrier designated by the buyer.

Some of the more widely used terms are defined below, in alphabetical order. More detailed explanations and definitions are found in the publications noted above. What is important about them is that 1) they carefully outline the respective responsibilities of buyer and seller; and 2) both buyer and seller can refer to Incoterms 1990 as an internationally accepted standard for the terms of trade.

CFR = Cost and Freight (...named port of destination)

CFR means the exporter must pay the costs and freight necessary to bring the goods to the named port of destination, but the risk of loss or damage to the goods, plus any additional costs due to events taking place after the time when the goods were delivered on board the

vessel, passes from the exporter to the buyer when the goods cross the ship's rail in the port of shipment. CFR also requires the exporter to clear the goods for export. (N.B. CFR is used for sea and inland waterway transport only; for other traffic, use the CPT term.)

CIF = Cost, Insurance and Freight (...named port of destination)

This is one of the better-known terms: it means the exporter has the same duties as under the CFR term, plus the added one of having to procure marine insurance against the buyer's risk of loss or damage to the goods during carriage. The exporter therefore contracts for insurance and pays the insurance premium. CIF also requires the exporter to clear the goods for export (N.B. CIF is used for sea and inland waterway transport only.)

CPT = Carriage Paid To (...named place of destination)

This Incoterm means that the exporter pays the freight for the carriage of the goods to the named destination. Risk of loss or damage to the goods, plus any additional costs due to events after the time when the goods were delivered to the carrier, is transferred from the exporter to the buyer when the goods have been delivered into the custody of the carrier.

"Carrier" defines any person who, in contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or a combination of these modes. CPT requires the seller to clear the goods for export. This term may be used for any mode of transport, including multimodal.

DDP = Delivered Duty Paid (...named place of destination)

DDP means the exporter fulfills his obligation to deliver when the goods have been made available at the named place, in the importing country. The exporter must bear the risks and costs, including duties, taxes and other charges of delivering the goods, cleared for importation. Please note: the exporter must, therefore, obtain an import licence for the country of destination, directly or indirectly. While the EXW term represents the minimum obligation of the exporter, DDP represents the maximum obligation.

EXW = Ex Works (...named place)

This term means that the exporter fulfills his obligation to deliver when he has made the goods available at his premises (works, factory, warehouse, etc.) to the buyer. He is not responsible for loading the goods onto the vehicle provided by the buyer, or for clearing the goods for export, unless this has been agreed to. The buyer bears all costs and risks in taking the goods from the exporter's premises to the desired destination. This term represents the

minimum obligation for the exporter; therefore it should not be used when the buyer is unable – directly or indirectly – to carry out the export formalities. In these circumstances, the FCA term should be used.

FCA = Free Carrier (...named place)

Under this term, the exporter fulfills his obligation to deliver when he has handed the goods, cleared by export, into the charge of the carrier named by the buyer at the named place or point.

FOB – Free On Board (...named port of shipment)

FOB is the other generally known term. It means the exporter fulfills his obligation to deliver when the goods have passed over the ship's rail at the named port of shipment. From that point on, the buyer must bear all costs and risks of loss or damage. The FOB term requires the exporter to clear the goods for export. (N.B. FOB is used for sea and inland waterway transport only.)

FOB in North America

Note that in Canada and the United States, the term FOB is used differently from the usage in the rest of the world. In fact, there are two North American usages: FOB (seller's end) = ex works (EXW), and FOB (buyer's end) = delivered duty paid (DDP).

7. Annotated Bibliography

Antaki, Nabil N. 1994. La filière du contrat international. Les Publications du Québec, Quebec. ISBN: 2-551-16161-4. 81 pages. Available from the Quebec ministère des Affaires internationales. In French. Short guide on international contracts. Written by a lawyer in plain, non-legalese French. Includes sections on how to negotiate an international contract, litigation and arbitration.

Canada Mortgage and Housing Corporation. September 1995. Directory of Sources of Support for Canada's Housing Exporters. 42 pages. Summary of federal, provincial and other Canadian programs and services to support Canadian housing exporters, published by CMHC's International Relations Division. Provides valuable background knowledge for the export negotiator.

Canada Mortgage and Housing Corporation. Undated companion volume to the above. National Strategic Framework for Canada's Housing Exporters: Report of the Federal Housing Export Strategies Task Force. 14 pages. Key federal government strategy document published by Task Force with membership from CMHC, Industry Canada, DFAIT, Natural Resources Canada and the National Research Council.

Churchman, David. 1995. Negotiation: Process, Tactics, Theory. Second Edition. University Press of America Inc. Lanham, New York, London. ISBN: 0-8191-9947-8. 97 pages. Particularly useful synthesis of negotiation theories, and tactics. Extensive bibliography.

Foreign Affairs and International Trade Canada. CanadExport. Newsletter on Canadian exporters and exporting issued every two weeks by DFAIT. Available from the InfoCentre at 1-800-267-8376. Read to keep up with export market information and issues that can affect a negotiation with a particular country market.

Foreign Affairs and International Trade Canada. 1995. Directory of the Canadian Trade Commissioner Service. Foreign Affairs and International Trade Canada, Trade Communications Division (BCT) and InfoCentre Data Base (8XA). 61 pages. Available at the nearest International Trade Centre (at least one in each province).

Foreign Affairs and International Trade Canada. 1996. Overview: Canada's International Business Strategy 1996-1997. Minister of Supply and Services Canada. ISBN: 0-662-24060-X. 49 pages. Available at the nearest International Trade Centre (at least one in each province).

Fowler, Alan. 1986. Effective Negotiation. Institute of Personnel Management. 133 pages. Primarily intended for personnel managers, still useful for concise statement of negotiation principles.

Gordon, John S. 1993. Profitable Exporting: A Complete Guide to Marketing Your Products Abroad. Second Edition. John Wiley & Sons. ISBN: 0-471-57514-3. 388 pages. Written for an American readership, nevertheless comprehensive and thorough. See especially Part One, Organize for Export, pp. 1-49.

Heritage Canada. 1993. Multiculturalism Means Business: A Directory of Business Contacts. 88 pages. Includes ethno-Canadian business organizations with connections to many countries. Ethnic Canadian businesspeople are often very good negotiators, in addition to being a source of information on their country of origin. This is a good but little-known resource: use it. Organized by province, there are also sections on ethnic media and ethno-cultural directories. Available at libraries or from Heritage Canada.

International Chamber of Commerce. Numerous publications on the export process, fraud, corruption, specific countries, marine insurance fraud, etc. For a list of publications, and other useful information, contact Mrs. Barbara Fisher, Publications & Finance, Canadian Council for International Business (CCIB), 1160-55 Metcalfe Street, Ottawa, ON K1P 6N4. Tel.: (613) 238-4000; Fax: (613) 238-7643.

Kennedy, Gavin, John Benson and John McMillan. 1980. Managing Negotiations. Business Books, London. ISBN: 0 09 141580 2. 179 pages. Good for strategic considerations; stresses the importance of listening.

Kennedy, Gavin. 1982. Everything is Negotiable! Business Books, London. ISBN: 0 09 1497700 1. 260 pages. Good for remembering this important principle. Many illustrative stories, told with humor and shrewdness.

Kuhn, Robert Lawrence. 1988. Dealmaker: All the Negotiating Skills and Secrets You Need. John Wiley and Sons, New York. ISBN: 0-471-62465-9. 316 pages. Lots of stories, lots of ideas.

Nadel, Jack. 1987. Cracking the Global Market: How to Do Business Around the Corner and Around the World. AMACOM, a division of American Management Association. ISBN: 0-8144-5911-0. 250 pages. See especially the chapter on financing, where he argues for borrowing to finance exporting. Highly readable; encourages shrewdness and calculating all costs of export financing, including interest, as part of preparation for contract negotiations.

Nothdurft, K. H. 1974. The Complete Guide to Successful Business Negotiation. Leviathan House, London & New York. ISBN: 0 900537 16 7. 196 pages. Good for overall awareness of negotiation issues.

Schoonmaker, Alan N. 1989. Negotiate to Win: Gaining the Psychological Edge. Prentice Hall, Englewood Cliffs, New Jersey. ISBN: 0-13-611385-0. 305 pages. Very well organized, very strong practical and theoretical base by lecturer on negotiation.

Vuillermoz, Andrée. 1995. La filière des contrats internationaux de transfert de technologie. Second Edition. Les Publications du Québec, Quebec. ISBN: 2-551-16390-0. 63 pages. Available from the Quebec ministère des Affaires internationales. In French only. Particularly useful are the sections on successful negotiation and the importance of imagination in international contract negotiations.

Walder, Francis. 1958. Saint-Germain ou la négociation. 202 pages. Excellent French novel on negotiation, won the 1958 Prix Goncourt. English translation available. Novel on negotiation techniques; recommended reading.

Winkler, John. 1984. Bargaining for Results. Facts on File Publications. New York and Bicester, UK. ISBN: 0-87196-848-7. 196 pages. Particularly good for business negotiations.

8. Annotated Internet Sites

Strategis:

http://strategis.ic.gc.ca

Strategis is a grouping of Industry Canada databases that are extremely useful to the housing exporter. For negotiation-related topics select the International Business Information Network for topics like cultural differences, especially on negotiating with China, Japan and Korea, which are explained at some length.

Strategis also lists professional negotiation support services (US and Canada) which offer small business negotiation support services or software to help you prepare a detailed negotiation plan, including, if necessary, a psychological profile of you and your opponent.

Foreign Affairs and International Trade Canada

http://www.dfait-maeci.gc.ca/english/trade

Some negotiation information in the individual Exporter's Guides series on most trading nations of the world. Also information on terms of financial assistance and general export support. CanadExport, a biweekly newsletter on exporting, is online and contains current information, announcements of upcoming trade fairs, etc.

The Smart Business Supersite

http://www.smartbiz.com

Many writers on negotiation are found at this huge site, which contains, in its own words, "hundreds of newsletter and book profiles and thousands of free resources on running your business." Negotiation resources include several courses, either on video or audiotape; many books; and short (one to five typewritten pages) articles on negotiation that could benefit the Canadian housing exporter. Most (but not all) of this material is from American sources and therefore is given from a U.S. point of view. Much of it deals with negotiation theory and approaches exerpted from particular books.

Perhaps some of the most useful material deals with national business cultures, etiquette (business card exchanges, for example), gift giving, etc., and advice to avoid offending your foreign (especially Asian) buyer before negotiations have begun. Another deals with shapes, colours, etc., to avoid in packaging your product for export to particular countries. Yet another explains when gifts are appropriate, how large they should be, and how they should be treated and exchanged.